

AMENDED IN ASSEMBLY MAY 16, 2012

AMENDED IN ASSEMBLY MAY 1, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 2537

Introduced by Assembly Member V. Manuel Pérez

February 24, 2012

An act to amend Sections 48902 and 48915 of, ~~and to add Section 48900.05 to,~~ the Education Code, relating to pupil discipline.

LEGISLATIVE COUNSEL'S DIGEST

AB 2537, as amended, V. Manuel Pérez. Pupil discipline: suspensions and expulsions.

~~(1) Existing~~

Existing law requires the principal of a school or the principal's designee to notify the appropriate law enforcement agencies of the county or city in which the school is situated of certain unlawful acts committed by a pupil that may result in suspension, expulsion, or criminal liability of the pupil, as specified. Existing law provides that a willful failure to make a report required by these provisions is an infraction punishable by a fine of not more than \$500.

This bill would delete the provision making a violation of that reporting requirement an infraction.

~~(2) Existing law authorizes the governing board of a school district to expel a pupil upon the recommendation of a principal, superintendent of schools, or by a hearing officer, as specified, if it finds that the pupil committed specified acts. Existing law requires that decision to expel a pupil to be based on a finding that other means of correction are not feasible or have repeatedly failed to bring about proper conduct, or due~~

to the nature of the act, the presence of the pupil will cause a continuing danger to the physical safety of the pupil or others, or both.

This bill would instead require that the decision to expel a pupil for those specified acts be based on both of those findings.

~~(3) Existing law requires the principal or superintendent of schools to immediately suspend and recommend expulsion of a pupil who he or she determines has committed certain acts at school or at a school activity off school grounds, and requires the governing board of the school district to order the pupil expelled upon finding that the pupil committed the act. The acts for which a pupil is required to be immediately suspended and expelled consist of the possessing, selling, or otherwise furnishing of a firearm, brandishing a knife at another person, unlawfully selling a controlled substance, committing or attempting to commit a sexual assault, and possessing an explosive. Existing law specifies other acts for which the principal or superintendent of schools is required to recommend expulsion of a pupil, unless he or she determines that expulsion is inappropriate, but for which the governing board of the school district has discretion as to whether to order the expulsion of the pupil.~~

~~This bill would delete the requirement that the principal or superintendent of schools immediately suspend a pupil for any of those acts. The bill would limit the requirement of mandatory expulsion to pupils who have been determined to have possessed, sold, or otherwise furnished a firearm, possessed an explosive, subject to specified exceptions, committed or attempted to commit a sexual assault, or committed a sexual battery at school or at a school activity off school grounds. The bill would include the acts of brandishing a knife at another person with the intent to harm that person and unlawfully selling a controlled substance, with certain exceptions, among the acts for which the principal or superintendent of schools would be required to recommend expulsion, except as specified, but for which the governing board of the school district would have discretion to order the expulsion of the pupil.~~

Under existing law, the principal or the superintendent of schools is required to recommend the expulsion of a pupil for certain acts committed at school or at a school activity off school grounds, unless the principal or superintendent finds that expulsion is inappropriate, due to the particular circumstance. These acts include the unlawful possession of certain controlled substances, except for the first offense for the possession of marijuana, as specified. For these acts, the

governing board of the school district is authorized, but not required, to order the expulsion of the pupil.

This bill would instead require the principal or superintendent to make that recommendation unless he or she determines that expulsion should not be recommended under the circumstances or that an alternative means of correction would address the conduct. The bill would encourage the principal or superintendent of schools to make that determination as quickly as possible to ensure that the pupil does not lose instructional time. The bill would include the act of possessing an over-the-counter medication or medication prescribed for the pupil by a physician as an additional exception to the act of possessing a controlled substance for purposes of the expulsion provisions described above.

Under existing law, the principal or superintendent of schools is required to immediately suspend, and to recommend expulsion of, a pupil that he or she determines has committed certain acts at school or at a school activity off school grounds, including the unlawful selling of certain controlled substances, and the governing board of the school district is required to order a pupil expelled upon the finding that the pupil did commit one of these acts.

This bill would include the act of unlawfully selling those controlled substances among the acts for which the principal or the superintendent of schools is required to recommend the expulsion of a pupil, except as specified, but for which the governing board of the school district is authorized, but not required, to order the expulsion of the pupil.

*This bill would declare the intent of the Legislature that the acts enumerated in specified provisions form the exclusive bases for the imposition of suspension or ~~expulsion~~. *expulsion.**

*Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.*

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 48900.05 is added to the Education Code,~~
- 2 ~~to read:~~
- 3 ~~48900.05. It is the intent of the Legislature that the acts~~
- 4 ~~enumerated in this article form the exclusive bases for the~~
- 5 ~~imposition of suspension or expulsion.~~
- 6 ~~SECTION 1. It is the intent of the Legislature that the acts~~
- 7 ~~enumerated in Article 1 (commencing with Section 48900) of~~

1 *Chapter 6 of Part 27 of Division 4 of Title 2 of the Education Code*
2 *form the exclusive bases for the imposition of suspension or*
3 *expulsion.*

4 SEC. 2. Section 48902 of the Education Code is amended to
5 read:

6 48902. (a) The principal of a school or the principal's designee
7 shall, ~~prior to~~ *before* the suspension or expulsion of any pupil,
8 notify the appropriate law enforcement authorities of the county
9 or city in which the school is situated, of any acts of the pupil that
10 may violate Section 245 of the Penal Code.

11 (b) The principal of a school or the principal's designee shall,
12 within one schoolday after suspension or expulsion of any pupil,
13 notify, by telephone or any other appropriate method chosen by
14 the school, the appropriate law enforcement authorities of the
15 county or the school district in which the school is situated of any
16 acts of the pupils that may violate subdivision (c) or (d) of Section
17 48900.

18 (c) Notwithstanding subdivision (b), the principal of a school
19 or the principal's designee shall notify the appropriate law
20 enforcement authorities of the county or city in which the school
21 is located of any acts of a pupil that may involve the possession
22 or sale of narcotics or of a controlled substance or a violation of
23 Section 626.9 or 626.10 of the Penal Code. The principal of a
24 school or the principal's designee shall report any act specified in
25 paragraph (1) or (5) of subdivision (c) of Section 48915 committed
26 by a pupil or nonpupil on a schoolsite to the city police or county
27 sheriff with jurisdiction over the school and the school security
28 department or the school police department, as applicable.

29 (d) A principal, the principal's designee, or any other person
30 reporting a known or suspected act described in subdivision (a) or
31 (b) is not civilly or criminally liable as a result of making any
32 report authorized by this article unless it can be proven that a false
33 report was made and that the person knew the report was false or
34 the report was made with reckless disregard for the truth or falsity
35 of the report.

36 (e) The principal of a school or the principal's designee reporting
37 a criminal act committed by a schoolage individual with
38 exceptional needs, as defined in Section 56026, shall ensure that
39 copies of the special education and disciplinary records of the pupil
40 are transmitted, as described in paragraph (9) of subsection (k) of

1 Section 1415 of Title 20 of the United States Code, for
2 consideration by the appropriate authorities to whom he or she
3 reports the criminal act. Any copies of the pupil's special education
4 and disciplinary records may be transmitted only to the extent
5 permissible under the federal Family Educational Rights and
6 Privacy Act of 1974 (20 U.S.C. Sec. 1232g et seq.).

7 SEC. 3. Section 48915 of the Education Code is amended to
8 read:

9 48915. (a) (1) Except as provided in subdivisions (c) and (e),
10 the principal or the superintendent of schools shall recommend
11 the expulsion of a pupil for any of the following acts committed
12 at school or at a school activity off school grounds, unless the
13 principal or superintendent determines that expulsion should not
14 be recommended under the circumstances or that an alternative
15 means of correction would address the conduct:

16 (A) Causing serious physical injury to another person, except
17 in self-defense.

18 (B) Possession of any knife or other dangerous object of no
19 reasonable use to the pupil.

20 (C) Unlawful possession of any controlled substance listed in
21 Chapter 2 (commencing with Section 11053) of Division 10 of the
22 Health and Safety Code, except for either of the following:

23 (i) The first offense for the possession of not more than one
24 avoirdupois ounce of marijuana, other than concentrated cannabis.

25 (ii) The possession of over-the-counter—~~or—prescription~~
26 *medication for use by the pupil for medical purposes or medication*
27 *prescribed for the pupil by a physician.*

28 (D) Unlawfully selling a controlled substance listed in Chapter
29 2 (commencing with Section 11053) of Division 10 of the Health
30 and Safety Code.

31 (E) Robbery or extortion.

32 (F) Assault or battery, as defined in Sections 240 and 242 of
33 the Penal Code, upon any school employee.

34 ~~(G) Brandishing a knife at another person with the intent to~~
35 ~~harm that person.~~

36 (2) If the principal or the superintendent of schools makes a
37 determination as described in paragraph (1), he or she is encouraged
38 to do so as quickly as possible to ensure that the pupil does not
39 lose instructional time.

(b) Upon recommendation by the principal or the superintendent of schools, or by a hearing officer or administrative panel appointed pursuant to subdivision (d) of Section 48918, the governing board may order a pupil expelled upon finding that the pupil committed an act listed in subdivision (a) or in subdivision (a), (b), (c), (d), or (e) of Section 48900. A decision to expel a pupil for an act listed in subparagraph (A), (B), (C), (E), or (F) of paragraph (1) of subdivision (a) or in subdivision (a), (b), (c), (d), or (e) of Section 48900 shall be based on a finding of one or both of the following:

(1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct.

(2) Due to the nature of the act, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others.

(c) The principal or superintendent of schools shall *immediately suspend, pursuant to Section 48911, and shall* recommend expulsion of a pupil that he or she determines has committed any of the following acts at school or at a school activity off school grounds:

(1) Possessing, selling, or otherwise furnishing a firearm. This subdivision does not apply to an act of possessing a firearm if the pupil had obtained prior written permission to possess the firearm from a certificated school employee, which is concurred in by the principal or the designee of the principal, or to the act of possessing an imitation firearm, as defined in subdivision (m) of Section 48900. This subdivision applies to an act of possessing a firearm only if the possession is verified by an employee of a school district.

(2) *Brandishing a knife at another person.*

~~(2)~~

(3) Committing or attempting to commit a sexual assault as defined in subdivision (n) of Section 48900 or committing a sexual battery as defined in subdivision (n) of Section 48900.

~~(3)~~

~~(4) Possession of an explosive. This subdivision does not apply to an act of possessing a firecracker. As used in this paragraph, "firecracker" means a device primarily used to make noise in displays and celebrations, and not as a weapon.~~

(d) The governing board shall order a pupil expelled upon finding that the pupil committed an act listed in subdivision (c),

1 and shall refer that pupil to a program of study that meets all of
2 the following conditions:

3 (1) Is appropriately prepared to accommodate pupils who exhibit
4 discipline problems.

5 (2) Is not provided at a comprehensive middle, junior, or senior
6 high school, or at any elementary school.

7 (3) Is not housed at the schoolsite attended by the pupil at the
8 time of suspension.

9 (e) Upon recommendation by the principal or the superintendent
10 of schools, or by a hearing officer or administrative panel appointed
11 pursuant to subdivision (d) of Section 48918, the governing board
12 may order a pupil expelled upon finding that the pupil, at school
13 or at a school activity off of school grounds violated subdivision
14 (f), (g), (h), (i), (j), (k), (l), or (m) of Section 48900, or Section
15 48900.2, 48900.3, or 48900.4, and ~~both~~ *either* of the following:

16 (1) That other means of correction are not feasible or have
17 repeatedly failed to bring about proper conduct.

18 (2) That due to the nature of the violation, the presence of the
19 pupil causes a continuing danger to the physical safety of the pupil
20 or others.

21 (f) The governing board shall refer a pupil who has been
22 expelled pursuant to subdivision (b) or (e) to a program of study
23 which meets all of the conditions specified in subdivision (d).
24 Notwithstanding this subdivision, with respect to a pupil expelled
25 pursuant to subdivision (e), if the county superintendent of schools
26 certifies that an alternative program of study is not available at a
27 site away from a comprehensive middle, junior, or senior high
28 school, or an elementary school, and that the only option for
29 placement is at another comprehensive middle, junior, or senior
30 high school, or another elementary school, the pupil may be
31 referred to a program of study that is provided at a comprehensive
32 middle, junior, or senior high school, or at an elementary school.

33 (g) As used in this section, “knife” means any dirk, dagger, or
34 other weapon with a fixed, sharpened blade fitted primarily for
35 stabbing, a weapon with a blade fitted primarily for stabbing, a
36 weapon with a blade longer than 3 ½ inches, a folding knife with
37 a blade that locks into place, or a razor with an unguarded blade.

1 (h) As used in this section, the term “explosive” means
2 “destructive device” as described in Section 921 of Title 18 of the
3 United States Code.

O